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LOWER RUBY RIVER FISHING ACCESS PLAN

MONTANA FISH, WILDLIFE AND PARKS



REGION THREE FISHERIES
BOZEMAN, MONTANA

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INTRODUCTION

The lower Ruby River is a relatively small southwest Montana river typified by a meandering riffle-pool type channel supporting robust populations of wild brown trout. For purposes of this plan, the lower Ruby River is defined as the 47.9 mile reach from the Ruby Reservoir Dam to the river's mouth at the Beaverhead River. The vast majority of the land along the lower Ruby River is privately owned and has been managed to grow hay and raise beef cattle on traditional family owned ranches. Public fishing access to the river has largely depended upon fee-gratis permission from these ranchers. Flows in the lower Ruby are largely controlled by releases from Ruby River Reservoir which is managed for irrigation water storage. Between 1979 and 1992, sampling of trout populations at various locations generally revealed brown trout densities varying between about 1,000 and 1,500 Age II and older fish per mile. More recent sampling has shown declines in brown trout numbers down to densities of 700 - 800 per mile and lower. These declines may be related to the discovery of Whirling Disease in the system and additional research is currently being conducted to investigate this presumption. In addition to brown trout the lower Ruby supports small numbers of rainbow trout, largely concentrated near the dam, as well as undetermined numbers of native species such as mountain whitefish, longnose dace, mottled sculpin, and longnose, and white sucker.

Over the past ten years, the lower Ruby River has been considered the number one priority for acquisition of public fishing access within Region Three of the Department of Fish, Wildlife, and Parks. It was so prioritized at that time due to Department perception that purchase of private lands for the exclusive use of fish and wildlife resources and fee access scenarios represented a trend leading toward the eventual loss of most, if not all, unrestricted public fishing access to the river.

Recent Statewide Angling Pressure Estimates (FWP 1985, '89, '91, and '93) indicate that the lower Ruby supported an average of 7,359 angler-days of recreation per year within the 1985 - 1993 period. Population estimates conducted in two study sections where free public access was available and largely unrestricted (1983, 1989 - 1991) revealed very healthy brown trout populations (1280 - 1500 per mile) with high numbers of larger fish. The Pressure Estimates also reveal that 60.5% of the use was by residents while 39.5% was accounted for by nonresident anglers. The latest estimate within the period (1993), however, revealed a total pressure estimate of 3,828 angler-days; 48.3% of which was due to nonresident anglers. (Data from the 1995 Pressure Estimate should be available by the end of June 1996.) Moreover, responses to a questionnaire distributed to landowners by the Ruby River Access Task Force (RRATF) accounted for 2,842 angler-days in 1995 of which no more than 37% had gained fishing access without paying some form of access fee. These observations clearly suggest a trend toward the loss of free public fishing access to the lower Ruby River.

In November 1995, FWP negotiated the acquisition of a permanent Fishing Access Site (FAS) near Sheridan on the Ruby River and released an Environmental Assessment of the proposal for public scrutiny and comment. Two public meetings were also held to gather public comment. While the majority of public comment and comment from sportsmen's organizations

avored acquisition of the FAS, the proposal became controversial. Most of the controversy surrounding the access proposal centered around the high cost of the acquisition relative to its limited scope, high costs and level of access development, the potential for resource damage due to high concentration of pressure at a single access site, private property issues, and the lack of a comprehensive fishing access plan for the lower Ruby River.

In the interest of facilitating the acquisition of public fishing access, a citizen's task force was formed at the request of the Governor's Office and FWP in January of 1996. The Ruby River Access Task Force (RRATF) analyzed the public fishing access issue and needs on the lower Ruby River and presented a Final Report on May 20 which included a recommended Public Access Alternative (Appendix A). The RRATF concluded that unrestricted free public angling access to the lower Ruby River was insufficient and further concluded that opportunities for non-paying anglers were likely to continue to decline. As a result, the Task Force recommended that FWP pursue the acquisition of public fishing access sites distributed throughout the length of the lower Ruby River. This FWP fishing access plan is based on the findings of the RRATF and its Recommended Alternative.

PLAN GOAL

The primary goal of the plan is to provide 7,500 to 8,000 annual angler-days of recreation dispersed to the highest degree possible along the 47.9 miles of the lower Ruby River while maintaining the quality of wild fish populations and their habitat and minimizing potential for landowner - angler conflict. This goal is not expected to be satisfied solely by the acquisition of public fishing access sites but rather by all legal forms of access in combination (see Description below).

PLAN OBJECTIVES

The primary objectives of this plan include the acquisition of several dispersed permanent FAS and the negotiation of short term lease agreements to further disperse angler pressure under a managed access scenario which emphasizes minimal development costs. The implementation of these objectives is subject to mandates and constraints enacted by the Montana Legislature in statute 87-1-605 which directs FWP to acquire, develop, and operate a statewide system of fishing access sites. It is also limited by the availability of willing access providers and funds available in the FWP Fishing Access Account as well as the prioritization of other statewide fishing access needs.

DESCRIPTION

The goal of 7,500 to 8,000 annual angler-days of recreation for the lower Ruby is consistent with past pressure estimates for the 1985 - 1991 period. In accordance with the RRATF analysis of landowner questionnaire data, it should not be presumed that this angler pressure can be equally distributed over the entire length of the lower Ruby River. For this

reason, this plan considers all means of legal angler access as capable of contributing to the desired goal of total recommended angler-days.

The lower Ruby River is divided into three segments (upper, middle, and lower) which are targeted for the acquisition of at least one permanent FAS per segment. Acquisitions are to be consummated in perpetuity through negotiation of a permanent Access Easement or Fee Title Purchase between FWP and willing sellers. In order to further disperse angling pressure within these same river segments, the negotiation of shorter term lease agreements will be pursued by FWP with willing potential lessors. Such leases will be consummated on a staggered or rotational basis to provide maximum angler distribution and to insure smoother transition as leases come up for renewal.

The three river reaches targeted for FAS acquisition are defined as follows: UPPER ACCESS REACH - Ruby Dam to the mouth of Alder Gulch Creek (14.4 river miles), MIDDLE ACCESS REACH - Alder Gulch Creek to Silver Spring Bridge (13.4 river miles), and LOWER ACCESS REACH Silver Spring Bridge to Ruby River mouth (20.1 river miles). The selection of these river reaches conforms to changes in flow regime, channel size, land ownership patterns, and trout population differences. Some attempt was made to equally distribute the total 47.9 miles of lower Ruby River among the three defined segments but larger property ownerships and contrasting flow regimes in the LOWER REACH limited access possibilities if the reach was shortened.

Emphasis will be placed on FAS acquisitions which require minimal development and high benefit cost ratio. Emphasis will also be placed on negotiations where adjacent landowners are also willing to provide access in addition to the initial party contacted. Neighboring landowners will be queried as all FAS negotiations are entered into. Prioritization and evaluation of potential FAS (purchase or lease) will be based, by defined reach, on criteria described below. Upon acquisition and development, FWP will provide for managed maintenance (litter control, noxious weed control, fence and gate maintenance, signing etc.) on all FAS (purchased or leased) in the lower Ruby Valley.

Within the three defined river reaches described above, FWP will assist landowners willing to continue to grant fishing access either by permission or without specific request on a no cost basis. Such assistance may take the form of signs, litter control, installation of stiles or fence walk ways and may involve the assistance of a local sportsmen's organization. The anonymity of landowners who wish to provide free access but do not want anglers directed to their property would still be maintained, however. This option would be pursued with cooperating landowners to further disperse angling pressure.

Fishing access under the Stream Access Law is further expected to provide some of the total angling pressure on the lower Ruby River. This method would not be under the control of this Plan but is expected to occur at legal points of entry by legal methods of entry. The legal status of the recently passed Madison County Ordinance 395 is in question at this time and raises uncertainty for access at county road bridges. The RRATF Final Report noted that

difficulties associated with wading access restricted to the high water marks could limit Stream Access Law entry and could potentially lead to angler - landowner conflicts. As such, they recommended that carefully developed FAS have the greatest potential to meet angler objectives and landowner concerns.

Another method of providing some of the total angling pressure on the Ruby River is the present system of fee access along the river. Most of this type of access occurs through the outfitting industry and is expected to continue at present levels or increase in the future. For anglers who wish to pay for a certain level of angling exclusivity, this option could serve to further distribute 2,000 to 2,500 angler-days of the total recreational goal for the lower Ruby River and provide additional income in the Ruby Valley.

FAS EVALUATION CRITERIA

In its final report, RRATF recommended that various criteria be applied in the evaluation of potential FAS acquisitions. These criteria are to be used to prioritize potential acquisitions within the designated Access Reaches. This access plan incorporates the recommended RRATF evaluation criteria with evaluation criteria that have been standard utilization by FWP in past FAS acquisitions. These FAS Evaluation Criteria for the lower Ruby River are as follows:

1. Property Location Relative to Existing Developed Access: The RRATF recommended highest prioritization of potential sites located adjacent to existing roads. Their analysis identified 12 bridges (public and private) with associated roads as high priority locations. This concept was identified as a high priority criterion to minimize development costs, disperse access sites, control weeds, maintain visual aesthetics, and reduce landowner conflicts. Proximity of potential FAS to developed access will be a determinant in site prioritization.
2. Fish Population Quality: The abundance of gamefish (generally brown trout) populations and numbers of older, larger fish (>13", >15", >18") on a per river mile basis will be a determinant in site prioritization.
3. Fish Habitat Quality: The quality of the habitat within streambanks and channel relative to natural channel type, the vigor and abundance of woody riparian species, and the functional link between channel and floodplain terraces will be a determinant in site prioritization.
4. Fish Habitat Improvement Potential: Where fish habitat is not optimal on a potential FAS property, consideration will be given to opportunity for improvement with a cooperating landowner. Such improvements could include, but not be limited to, grazing management plans, bank stabilization projects, riparian fencing, barrier removal, etc. and be considered as a determinant in site prioritization. Such investments by FWP would have to be evaluated under Benefit Cost Analysis (See Implementation Guidelines Below) in the total site evaluation.
5. Site Location Relative to Other FAS: The RRATF placed an emphasis on angler dispersal and distribution of pressure on fisheries, resources, and locations along the lower Ruby

River. Priority will be given to gaining public fishing access within each of the three defined Access Reaches. Within each Access Reach, priority will be given to maximum dispersal of angler use. Site location, relative to the location of other FAS and ability to disperse angling pressure, will be a determinant in site prioritization.

6. Available River Length: The stream length contained within a potential FAS property will be considered relative to several components including the number of anglers the site could accommodate, potential for anglers to disperse, and conservation of the natural resources on the site. The available river length contained within a potential FAS provider's ownership will be a determinant in site prioritization.

7. Continuity of Ownership: The RRATF determined that lengths of river which exit and reenter FAS properties and reaches where FAS ownership encompasses only one bank of the river could lead to conflict with adjacent landowners. For this reason, RRATF recommended that single ownership of both banks or willing adjacent landowner cooperation be considered significant criteria for FAS consideration. Continuity of ownership of both river banks will be a determinant in site prioritization.

8. Multiple Ownerships: The RRATF determined that neighboring landowners may be affected by the siting of FAS on the lower Ruby River. For this reason, they recommended that landowners adjacent to potential FAS be contacted to determine if they would be willing to participate and, if so, enter into negotiations to provide additional access. This approach would expand the size of the FAS under negotiation, better disperse pressure, and reduce the potential for landowner conflict. The ability to incorporate multiple ownerships into a single FAS will be a determinant in site prioritization.

9. Site Development Costs: Development costs can vary substantially among potential FAS. Latrine installation, river corridor fence, road construction costs, etc., may vary widely with topography. The ability to minimize development costs will be a determinant in site prioritization. (See Criterion 1).

IMPLEMENTATION GUIDELINES

Most of the RRATF recommendations found in its Final Report have been incorporated into Plan Objectives and the FAS Evaluation Criteria. The remaining recommendations made by RRATF have been incorporated into this plan as guidelines to assist in its implementation for the benefit of the sportsmen, Ruby Valley landowners, and FWP. These guidelines are as follows:

1. The lower Ruby River is not large enough to be easily and safely navigated throughout much of its length. It is crossed by many fences, ranch access bridges, and irrigation diversions as well as being subject to variable flow regimes dependant upon releases from the Ruby Dam. While it is presumed that some floating will occur in the lower Ruby, the most practical

approach to fishing access is a combination of bank and wade fishing. For these reasons, boat ramps are not components of Ruby River FAS.

2. In order to reduce crowding and the potential for environmental degradation, FAS Parking Areas should be limited in size to accommodate no more than five passenger vehicles per mile of river access.

3. The RRATF noted landowner and angler concern for the future health of trout populations under an expanded access scenario. In deference to that concern, FWP will remain committed to the monitoring of trout populations at or near various access sites to insure that the quality of these populations is maintained. With the discovery of Whirling Disease in the lower Ruby, it is imperative that population monitoring incorporate the affects of that disease into the description of the status of Ruby River populations. It is further recommended that FWP take restrictive regulatory steps to protect these populations if monitoring reveals an angling related loss of numbers or significant shift in age or size composition.

4. The RRATF noted a concern for maintenance, litter control, weed control, and signing at Ruby FAS. Part of the concern centered around boundary fencing to prevent trespass on neighboring ownerships. It is therefore recommended that FWP employ seasonal personnel to regularly maintain FAS along the lower Ruby under a format similar to those in operation on other area rivers. It is further recommended that the seasonal employee perform routine FAS related maintenance activities on private lands which provide unrestricted public access free of charge.

5. The RRATF considered access for fishing only. Access for hunting was not addressed. Due to the level of development in some portions of the Ruby Valley and general close proximity of homes, roads, ranch operations, etc., hunting is not considered a necessary component of Ruby River FAS.

6. Due to the recommended limited size of parking facilities and high associated maintenance costs as well as neighboring landowner concerns, camping is not a component of Ruby River FAS.

7. The RRATF recommended that a consistent, business - like approach among all parties involved would facilitate access negotiations. It further recommended that the public should be represented in the negotiation process through the inclusion of an independent (neutral) observer(s) mutually agreed upon by RRATF and FWP. Because certain parts of the negotiations might be confidential in nature to the private landowner, the participation of the observer should also be subject to the approval of the negotiating landowner.

8. The RRATF recommended that a Benefit - Cost Analysis be incorporated into each potential FAS Environmental Assessment to assist in public review. Such an analysis would also be helpful for FWP evaluation of a potential acquisition. With the assistance of the Department Bioeconomist, FWP will design a standardized Benefit - Cost Analysis which allows meaningful

comparison of all potential FAS on an equal footing and apply this analysis to each potential FAS under consideration. Additional discussion of some of the components considered under the Benefit Cost Analysis is treated in Appendix B.

9. Due to concerns raised in discussions with landowners, the RRATF requested that liability be addressed by the department (see Appendix C).

PLAN IMPLEMENTATION

The implementation of this access plan will begin upon approval by the RRATF and Montana FWP Commission. The implementation schedule of the plan is as follows:

Date	Action
<ul style="list-style-type: none"> ● May 20, 1996 ● May 24, 1996 ● May 31, 1996 ● Jun 7, 1996 ● Jun 14, 1996 ● Jun 19, 1996 ● Jun 26, 1996 ● Jul-Sep 1996 ● Jul-Dec 1996 	<ul style="list-style-type: none"> ● RRATF Final Report ● FWP Regional and Helena staff meeting ● FWP Commission review RRATF Final Report ● FWP Regional Draft Ruby River Access Plan ● FWP Internal Review of Draft Plan ● RRATF Review and Approval of Draft Access Plan ● FWP Commission Review and Approval of Plan ● Selection Process Independent Observer(s) ● FWP landowner contacts, field property analysis, prioritization by criteria
<ul style="list-style-type: none"> ● Jan 1, 1997 	<ul style="list-style-type: none"> ● Start landowner negotiation process beginning with highest prioritization by Access Reach for FAS acquisitions ● Open ended process of acquisition
<ul style="list-style-type: none"> ● Jan 1997 until Plan Goals and Objectives are Attained 	
<ul style="list-style-type: none"> ● July 1, 1997 	<ul style="list-style-type: none"> ● 1st annual progress report completed

Plan implementation is also subject to a large number of variables. The balance between the availability of willing access providers, prevailing land values in the lower Ruby, and funds available in the FWP Fishing Access Account will limit both the amount and rate of acquisition. Other statewide fishing access needs will also compete with the Ruby River for limited acquisition and development funds and employee time. Under current law, the statewide FAS program generates an estimated \$454,000 per year for the purchase, operation, development, and maintenance of FAS. Funds used for acquisition may not exceed 50% of the monies set aside each year. As of May 3, 1996, there was \$1,143,000 in appropriation authority available for the acquisition of FAS throughout the state.

Legal mandates will influence time frames for processing of negotiated acquisitions and site development will, of necessity, lag behind acquisition. Finally, sportsmen and FWP Commission approval will be needed to complete any access acquisition.

Through their landowner questionnaire process, the RRATF has assembled a list of 14 Ruby Valley landowners who have expressed an interest in negotiating public access agreements with FWP. In addition to this list, FWP has been in contact with one additional landowner who has expressed an interest in providing access and another party still has a FAS negotiation pending before the FWP Commission. This list of 16 landowners will form the basis for a pool of properties which will be subject to analysis under the priority ranking Criteria defined within this plan. Additional interested landowners may be added to this original list as they make their interest known to FWP at which time their properties will be subject to the same evaluation process.

This evaluation process will be conducted by Regional personnel including, but not limited to, the area fisheries management biologist, the regional fisheries manager, and the regional supervisor. Following an on the ground meeting with the landowner and contact with the adjacent landowners, information will be collected to form the basis for prioritization under the evaluation Criteria. Assistance for portions of the evaluation will be sought from FWP land agents, Bio-Economist, and Design and Construction to complete the evaluation Criteria.

When the evaluation process has been completed, lands within the evaluation pool will be prioritized between and within the designated Access Reaches. The order in which the lands have been prioritized will determine the order in which landowners will be contacted by FWP land agents and the Independent Observer(s) to begin the process of FAS negotiations. If the landowner and FWP can come to an agreement that is mutually acceptable to all parties, the normal process of preliminary FWP Commission approval, Environmental Assessment, Public comment, and final FWP Commission approval will determine the final acquisition of the property. Approval of the State Land Board must be obtained for acquisitions exceeding 100 acres in size or \$100,000 in value.

It is expected that landowner negotiations will begin in January 1997 and remain an open ended process until the Goals and Objectives of the Lower Ruby River Access Plan have been met.

DESIRED FUTURE PLAN RESULT

The total amount of public fishing access sites (FAS) required to achieve the Plan Goal while maintaining quality of experience and conserving resources cannot be exactly anticipated at the present. The RRATF recommended the location of at least one permanent FAS in each of three defined Access Reaches (see below) and the use of short term leases to add dispersal opportunity. At this time, it appears reasonable to assume that about 4,000 annual angler-days would have to be supported on public FAS to achieve the Plan Goal. Under this assumption, four FAS would have to sustain an average 5.4 angler-days per day (May - Sept) while six FAS

would have to sustain 3.6 angler-days per day over the same period. Additional angling opportunity in April and October as well as limited opportunities in the intervening winter months would tend to lower the average daily pressure. Thus, the desired amount of FAS ultimately acquired on the lower Ruby by FWP would range between a minimum of four to six sites, dependant upon the stream length available per site, dispersed among the three defined Access Reaches. However, subject to the provisions of this plan, there is no set maximum number of sites.

APPENDIX A

RUBY RIVER ACCESS TASK FORCE FINAL REPORT

Data from Montana Fish Wildlife and Parks suggest that there has been a significant decline in fishing pressure on the Lower Ruby River between the mouth and the Ruby Reservoir Dam. Estimated angler days in 1989 was at 10,395, representing 217 days per mile per year. In 1993, fishing pressure was estimated at 3828 angler days (80 days/mile/year). A decrease in unrestricted free access for anglers has coincided with increases in exclusive private use and fee access scenarios.

While responses to the RRATF questionnaire didn't definitively say how much unrestricted free access currently exists on the Ruby River, they generally supported MFWP's findings. At least 16 landowners currently allow no fishing access or some type of fee is required. Nineteen of the questionnaire's respondents provided angler use estimates totaling 2842 angler days. Evaluation of the responses suggested that no more than 37% of this use was by the public who asked to fish without a fee.

Thirteen said they provide some level of free public fishing on their properties. At least 6 of these suggested that permission was restricted in some fashion. Unfortunately, the questionnaire failed to determine if the remaining 7 landowners allow fishing for "all who ask". Estimated use on two of these properties totaled only 55-70 days. This is well below use estimates from one landowner who allows access only to Ruby Valley residents (400 angler days).

Discussions with 2 landowners who currently allow access to all who ask, indicate that they do not wish anyone (local businesses or MFWP) to openly direct anglers to their property. RRATF believes this would also be the case for others. Further, one of the 2 landowners above, said that he/she had decided the way access was currently handled would change. The other expected that access on his/her property could also change in the future.

Through the questionnaire we attempted to define how MFWP's purchasing access on the river would affect landowners who are currently allowing free public access (question #6). Responses suggested that some landowners would quit allowing access. Please refer to the Summary of RRATF Landowner Questionnaire for a more detailed description of responses. There are no guarantees, however, that those currently allowing access will continue even if MFWP didn't purchase access.

It is our belief and others' we have talked to, that there is not sufficient unrestricted free angling access on the lower Ruby River. We further believe without obtaining access sites, opportunities for non-paying anglers will continue to decline. While some who currently provide free public access may stop if additional access is purchased, we don't consider the amount of angling opportunity that could be lost justifies the risks of not acquiring sites.

We believe the lower Ruby River is not large enough to be easily and safely floated throughout much of its length. It is crossed by many fences, ranch access bridges, and irrigation diversions as well as being subject to variable flow regimes dependant upon releases from the Ruby Dam. It is classified as Class II under the Montana Stream Access Law. The stream has many deep pools and runs and can be difficult to fish by wading under heavy runoff or release regimes from the dam. We believe that a combination of bank and wade fishing is the most feasible angling approach to use on the river. Thus, boat ramps should not be necessary parts of access sites. While some floating will occur, we believe that providing a boat ramp may be misleading to people and could facilitate trespass or mishaps.

A combination of wade and bank fishing generally requires a reasonable reach of river access to allow anglers to legally walk above the normal high water mark and disperse in an effective manner. Higher priority should be given to areas offering the greatest ability for dispersal to occur. This opportunity probably tends to be correlated with accessible stream length, although there may be exceptions to this. To maintain the quality of angling experience, we believe that parking lots should be built to accommodate no more than 5 vehicles/mile of access.

It has been presumed that access to the Ruby River is obtainable through the stream access law. Madison County Ordinance #395 was passed in an attempt to eliminate some of the obstacles preventing access at county bridge sites. The recent threat of a lawsuit has left the legality of this ordinance somewhat in question.

We have chosen not to include the stream access law as part of our proposed access plan for several reasons. First and most obvious, access at several bridges is not easily obtainable due to various characteristics of existing fences. Further, the legality of CO #395, which addresses this issue, has not yet been fully determined. Second, regardless of the fate of CO #395, the issue of where anglers could safely park would not be resolved. Finally, access under the stream access law would do little to alleviate the potential for angler/landowner conflicts. RRATF believes much of the river is not easily or safely floated, and the quality of fishing experience could be reduced if travel up and downstream is restricted to within the high water marks. Thus, the potential for trespass would increase. We believe that carefully located developed access sites have the greatest potential to meet landowner concerns and angler objectives.

In the course of discussions between landowners, it became obvious that there is widespread concern over potential impacts that unrestricted public access may have on the fishery. It is not our goal to definitively determine whether their concerns are well founded. They are real, however, and highlight a sincere concern for the fishery. A number of landowners indicated that they would not negotiate access without additional restrictions over what the current fishing regulations impose. Thus, more stringent regulations could increase the number of potential fishing access sites.

We believe MFWP should manage the river to prevent degradation of the fishery and could implement more stringent angling regulations such as catch and release, slot limits, full closures, or others if they deem it necessary.

Question #5 on the RRATF questionnaire asked landowners what their greatest concerns were regarding public access sites near their property. Some of the most commonly cited concerns we've attempted to address includes trespass, trash, protect sensitive fishery, decrease in property value, damage to stream/riparian, weeds, gates left open, visual qualities, and problems with parking and road locations.

A common concern we could not directly address, but which needs to be noted and addressed, if possible, by MFWP is liability associated with trespass.

Results from the questionnaire and from follow-up personal interviews indicate that there are a number of landowners willing to negotiate with MFWP in order to establish public access sites on the river. We believe the following proposal is implementable and provides a framework for river access, which minimizes potential for conflicts and encourages a positive relationship between landowners and the angling public.

We have included as an addendum to the final report a list of landowners willing to negotiate with MFWP, individual responses to RRATF questionnaires and a summary of general comments during personal interviews. Responses from the questionnaire or comments (beyond their willingness to negotiate with MFWP) should not be available to the public, since we did not tell them these would become public information.

RRATF PROPOSED PUBLIC FISHING ACCESS ALTERNATIVE

ROAD AND OTHER ACQUIRED ACCESS PROPOSAL

Objectives:

Provide permanent fishing access points at several locations within the lower Ruby River. Further distribute anglers through shorter term (possibly rotated) leases. Minimize potential for landowner angler conflicts; provide income for landowners; conserve resources; restrict spread of weeds; minimize development costs; manage access.

Description:

The river is divided into 3 segments (upper, middle and lower). Each segment is targeted for purchase of at least 1 permanent fishing access site (Easement or Fee Title Purchase). In addition, shorter term leases are negotiated to: provide fishing opportunities; and reduce crowding by dispersing anglers.

Potential access sites within each segment are defined based on ownership pattern, with consideration given to fishing opportunities, habitat conditions, the potential for anglers to disperse, available river length, and potential costs associated with development of an access site. These considerations will highlight areas of interest and provide the framework under which sites are evaluated and payment negotiated. Because landowner interest in selling access (or the type of agreement that is acceptable) may change over time, a group of leases (preferably with staggered time frames) will be negotiated to spread anglers and maintain opportunities until access goals on the river are attained through an agreed upon combination of easements and leases.

Highest priority would be placed on developing access sites adjacent to existing roads. There are approximately 12 bridges (5 public; 7 private) which cross the lower Ruby River. Access possibilities will also be considered where an access site would be beneficial in distributing angling pressure or reducing landowner angler conflicts.

Road sites are targeted as highest priority for a several reasons:

- 1) County bridges provide an access point through which landowners can negotiate with MFWP on how access is handled, thus reducing landowner concerns and mitigating angler impacts.
- 2) The potential for spread of unwanted weeds and possible problems with gates being left open should be reduced if new roads are not required.
- 3) Visual esthetics of the river and valley bottom should not significantly change for neighboring landowners with houses nearby, since most access sites would be adjacent to already existing roads. This should minimize effects on adjacent property values associated with scenic qualities of the river and valley bottom;
- 4) Public (and private - if other landowners want to participate) bridge crossings are distributed throughout the length of the lower Ruby River, serving to better distribute angling pressure and possible impacts.
- 5) Since roads already exist, development costs associated with access sites could be minimized;

MFWP would maintain parking/access areas or enter into agreements to see that this is done; if required, MFWP would employ a seasonal manager to manage anglers and patrol access sites; and MFWP would make information available on fishing access locations.

Where neighboring landowners may be affected by an access site and are willing to participate, payment for access could extend to upstream and/or downstream landowners. Whether to include additional river access should be decided based on ownership pattern (i.e. does/do willing landowner/s own the majority of both banks); benefits and cost of adding to

the access; the potential for reducing conflicts; and ability for MFWP and landowner to reach agreement on terms of the additional access. Payment for access would allow fishermen to walk on banks outside of high water marks along the stream corridor. Where landowners choose not to participate, Property boundaries would be defined by signs which say something to the effect of: "beyond this point, access above the high water mark of the river has not been acquired and is illegal".

Where landowners agree to provide unlimited public access outside of negotiated lease or easement purchases, we believe that MFWP should offer to have trash pick-up and general maintenance in fashion similar to what will be done on purchased access sites.

RRATF RECOMMENDATIONS REGARDING ALTERNATIVE:

- 1) RRATF is not including hunting opportunities as part of this access plan.
- 2) To minimize the potential for creating unnecessary landowner/angler conflicts, RRATF strongly recommends that any purchased fishing access site have willing, participating landowners on both sides of the river. At sites where exceptions to this occur (i.e. non participating landowner owns one bank for part of the river distance), the potential for conflict should be carefully considered and should be a significant criteria to help compare it against other possible access sites.
- 3) RRATF recommends that each proposed acquisition have a cost benefit analysis completed and included in the Environmental Analysis, so it is available for public review.
- 4) We strongly encourage leases and the flexibility that is associated with them. Short term leases can broaden access opportunities and allow anglers and MFWP to understand strengths and weaknesses of access sites before long term purchase occurs.
- 5) Boat ramps should not be necessary parts of access sites.
- 6) Additional favor should be given to areas offering the greatest ability for dispersal of anglers to occur. This opportunity probably tends to be correlated with accessible stream length, although there may be exceptions to this. To maintain the quality of angling experience, we believe that parking lots should be built to accommodate no more than 5 vehicles/mile of river access.

ADDITIONAL RECOMMENDATIONS

MFWP should take the proposal described above together with their knowledge of the Ruby River Fishery and mesh it with access possibilities to create an implementation plan. We recommend:

- 1) The plan include the total access that FWP believes is desirable on the Ruby, i.e. the plan should address total desired or recommended access.
- 2) The plan define a time frame for accomplishing specific access objectives, how it will be accomplished, and by whom.
- 3) The plan be presented to the RRATF for its approval. Should the RRATF and FWP not be able to reach agreement, the Montana Fish, Wildlife and Parks Commission should arbitrate a final solution.

The Task Force believes that successful implementation of this proposal is dependent on a consistent, up-front, business-like approach to negotiations by all parties involved. We recommend the following provisions be followed during negotiations for access sites:

- 1) The Same FWP personnel, to the extent possible, shall do the negotiating with the landowners during the period it takes to implement the Ruby River Access Plan.
- 2) An independent (neutral) observer(s) shall be included in all negotiations, plans for negotiations and discussions involved in acquiring or attempts to acquire access on the Ruby.
- 3) The independent observer(s) shall be charged with keeping the TF or its successor(s), landowners, conservation groups, and sportsmen's groups apprised of the progress of negotiations.
- 4) The TF or its successor(s) and FWP shall mutually have the power to approve the independent observer(s). The TF or its successor(s) and FWP shall have the authority to appoint other observer(s) in place of existing observer(s). If agreement cannot be reached on who the neutral observer(s) shall be, MFWP Commission shall arbitrate a final solution.
- 5) MFWP should make all non-confidential information available to interested parties. MFWP legal counsel shall determine what is confidential.

ALTERNATIVES CONSIDERED BUT NOT FORWARDED

1) PRIVATE FEE ACCESS SYSTEM

Objectives:

Control access; provide income for landowners; conserve resources

Description:

Interested landowners form an association and employ a manager. Board of directors establish policy including rod days per reach and fee structure. Manager would work with MFWP to enforce existing laws and regulations.

Free public access would be limited to property controlled by landowners, who are not members of the association.

Reason/s for not forwarding:

Alternative would not meet goal of providing acceptable levels of free access.

2) REID ROSENTHAL VALLEY - WIDE FREE ACCESS PROPOSAL

See copy of Rosenthal plan

Responses from landowner questionnaires and discussions with some landowners indicated that implementing this plan over the entire lower Ruby River was not feasible. We also agree with concerns raised by MFWP in its response to the latest proposal.

3) CONTINUE WITH CURRENT ANGLING ACCESS OPPORTUNITIES**Objectives:**

Continue to provide current opportunities with regard to public angling access to the Ruby River; Eliminate potential problems associated with State sponsored purchase of fishing access sites primarily neighboring landowner problems.

Description:

The RRATF or the MFWP have not determined conclusively how much river is currently available to "all who ask". Find out and allow public to be aware of where access opportunities exist.

Reasons for not forwarding:

This alternative would not adequately meet current or long term goals of the angling public.

Information the RRATF has gathered through the questionnaire survey and from informal discussions with landowners tends to support MFWP's findings of a decrease in angling use on the Ruby River. We believe current availability of unrestricted free access is less than optimal and without purchased sites, public use opportunities will continue to decline.

APPENDIX B

BENEFIT COST ANALYSIS

The development of a Benefit - Cost (B/C) Analysis is fairly straightforward for a project where the costs and benefits are reasonably well known and quantifiable. To an extent, this is the case with the proposed fishing access plan for the lower Ruby River. A review of two sources concerning B/C analysis emphasized the "importance of applying benefit/cost analysis more generally in the context of social welfare maximization...". The following is an outline of the benefits and costs that should be considered in an analysis of an individual FAS acquisition:

Benefits:

- A) Recreational Access -
 - 1) fishing angler-days
 - 2) wildlife viewing
 - 3) potential educational opportunity
- B) Social benefits of public access - these benefits are associated with knowing public access is available on the Ruby River although they may not use it.

Fishing at these sites focuses on wading anglers. Boat ramps are not considered at the FAS.

Hunting, camping, and picnicking are not uses that are being considered for analysis at these sites.

Costs:

- A) Initial purchase price -
 - 1) fishing access easement
 - 2) lease
 - 3) fee title
- B) Development Costs -
 - 1) roads
 - 2) parking areas and barriers
 - 3) signing, fencing if necessary
- C) Operations and Maintenance -
 - 1) waste pickup
 - 2) road maintenance
 - 3) pit toilet pumping
- D) Social Costs -
 - 1) congestion
 - 2) safety concerns

While a number of these benefits and costs are easily quantified, others are not. They are, however, legitimate benefits and costs associated with a FAS purchase. The social benefits of providing fishing access on the Ruby River so the general public may enjoy this resource if they wish are not readily translated into dollars, as are the social costs related to additional congestion and safety concerns.

Once all initial and future benefits and costs are enumerated, they can be compared to determine if the benefits exceed the costs of the purchase, easement, or lease. Before doing this, one must discount the project costs and benefits that will be incurred in the future to the present by using a discount rate that is reasonable and acceptable. A major decision point focuses on what discount rate to choose. The higher the rate chosen, the lower the present value of the costs and benefits. Federal agencies have used rates from 4-6 percent on their projects. A rate of 6.5 percent was used in the Brewer property acquisition assessment.

APPENDIX C

LANDOWNER LIABILITY

Potential landowner participants in FWP access programs have expressed concern over the possibility of increased liability exposure resulting from participation. These concerns have been addressed by the recreational use statute (MCA 70-16-301 & 302) which gives partial immunity from liability for qualifying landowners. Landowners participating in leases or easements under FWP access programs are covered by this partial immunity. However, it does not cover or provide protection against the costs of defending against lawsuits that have no merit, generally referred to as "frivolous" lawsuits.

The recreational use statute was amended last session in Senate Bill 211. The amendments clarify that the statute has broad coverage and, specifically important for our purposes, require that the person recreating must not have given valuable consideration for entry to the property. Payments from FWP under the access programs would not constitute "valuable consideration", meaning the participating landowner would have protection under the recreational use statute. It is also important to understand that the partial immunity granted, with liability only for "willful or wanton misconduct", is the greatest protection against liability that the legislature can grant. The courts are not likely to allow a greater grant of immunity. This protection can be enhanced if the landowner participant does a risk assessment, documents this, and then takes the steps identified, such as signing, establishing off-limits areas, etc.

In contrast, landowners who charge any type of fees to hunt or fish on their land do not have this partial immunity and are liable if they are negligent. The same is true if they lease their land for outfitting.

ment of the ordinance and of the imposition of the fines and penalties therein provided.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(part); amd. Sec. 69, Ch. 421, L. 1979; amd. Sec. 2, Ch. 659, L. 1983; amd. Sec. 5, Ch. 698, L. 1983; amd. Sec. 2, Ch. 99, L. 1985; amd. Sec. 2, Ch. 350, L. 1987; amd. Sec. 3, Ch. 484, L. 1987; amd. Sec. 1, Ch. 612, L. 1987; amd. Sec. 1, Ch. 789, L. 1991.

Cross-References

Municipal traffic and motor vehicle regulation, 7-14-4102, 7-14-4103.

Boats — prohibited operation, 23-2-523.

Boats — alcohol concentration standards, 23-2-535.

Responsibility — intoxicated or drugged condition, 45-2-203.

Negligent vehicular assault, 45-5-205.

Scheduling of dangerous drugs, Title 50, ch. 32, part 2.

Criminal laws limitation, 53-24-106.

Definition of "vehicle", 61-1-103.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

Definition of "ways of this state open to the public", 61-8-101.

Operation of a motor vehicle by a person with blood alcohol concentration of 0.10 or more, 61-8-406.

Multiple convictions prohibited, 61-8-408.

Forfeiture of motor vehicle for conviction of third offense, 61-8-714.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

Habitual traffic offenders, Title 61, ch. 11, part 2.

TITLE 70

PROPERTY

CHAPTER 16

RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY

Part 3

Gratuitous Permittee for Recreation

70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987; amd. Sec. 8, Ch. 264, L. 1993; amd. Sec. 1, Ch. 303, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 303 inserted "biking".

Cross-References

"Recreational use" defined, 23-2-301.

70-16-302. Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987; amd. Sec. 2, Ch. 303, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 303 near beginning of first sentence of (1) substituted "a person who uses property, including property owned or leased by a public entity, for recreational purposes" for "a person who makes recreational use of any property in the possession or under the control of another", after "permission" deleted "and without giving a valuable consideration therefor", after "landowner" deleted "his agent, or his tenant", and near end, after "purpose", inserted "if the person does

not give a valuable consideration to the landowner in exchange for the recreational use of the property", in second sentence, in two places after "landowner", deleted "his agent, or his tenant", and inserted last sentence defining consideration as excluding the state land recreational use license fee; inserted (2) defining landowner; inserted (3) defining property; and made minor changes in style.

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

